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80-1489

No. ———

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1980

———

JOHN E. COYNE and JAMES S. WELTY, JR.,

Petitioners,

vs.

CITY OF CINCINNATI,

Respondent.

———

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

———

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QUESTION PRESENTED FOR REVIEW

Section 503-31 of the City of Cincinnati Municipal Code, an enactment for the preservation of the integrity of municipal streets, on its face, as applied and as judicially construed, imposes upon the class of motor vehicle operators an unreasonable and arbitrary prohibition of all modes of vehicular traction other than vehicles equipped with wheels and rubber tires, in the face of the total demonstration by petitioners that the motor vehicles here involved, possessing rubber tracking traction equipment, were licensed motor vehicles by the State of Ohio for operation on the public roadways of the State of Ohio, were authorized for vehicular travel throughout the State of Ohio, except the City of Cincinnati by virtue of the subject ordinance, and possessed less potential for roadway surface damage than conventional motor vehicles equipped with wheels and rubber tires, resulting in dissimilar treatment of motor vehicle operators similarly circumstanced and denying to these petitioner-operators of licensed tracked motor vehicles the equal protection and due process of law to which they are entitled by the Fourteenth Amendment of the Constitution of the United States.

PARTIES TO THE PROCEEDINGS BEFORE THE SUPREME COURT OF OHIO

The caption of the case in this Court contains the names of all parties.

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CITY OF CINCINNATI,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

OPINIONS BELOW

The opinion of the Supreme Court of Ohio, reversing the Court of Appeals and affirming the conviction of Petitioner John E. Coyne and remanding for trial petitioners John E. Coyne and James S. Welty, Jr., is reported at 64 OhioSt.2d 28, 413 N.E. 2d 1177 (1980) and set forth herein as Appendix A. The order denying petitioners' motion for rehearing is unreported and set forth herein as Appendix B. The opinion of the Court of Appeals, First Appellate District, Hamilton County, Ohio, reversing the conviction of petitioner Coyne is unreported and set forth herein as Appendix C. The opinion of the Court of Appeals, First Appellate District, Hamilton County, Ohio,

affirming the dismissal of the case against petitioners Coyne and Welty is unreported and is set forth herein as Appendix D. The oral opinion of William Fellerhoff, Judge of the Hamilton County Municipal Court, is unreported and is set forth herein as Appendix E. The oral opinion of Donald Schott, Judge of the Hamilton County Municipal Court, denying petitioner Coyne's motion for dismissal, and his oral finding of conviction and sentence, are unreported and are set forth herein as Appendix F. The opinion of the Court of Appeals, First Appellate District, Hamilton County, Ohio, judicially construing Section 503-31, Cincinnati Municipal Code, is unreported and is set forth herein as Appendix G.

JURISDICTION

The Supreme Court of Ohio entered its decision and judgment November 26, 1980, reversing the decisions of the Court of Appeals for the First Appellate District, Hamilton County, Ohio, thereby affirming the judgment of conviction entered against petitioner Coyne by the Hamilton County Municipal Court, and reversing the dismissal of charges against petitioners Coyne and Welty by the Hamilton County Municipal Court, and on December 30, 1980 denied petitioners' motion for rehearing. The Supreme Court of Ohio in its decision declared that petitioners failed to establish by clear and convincing evidence that the subject ordinance lacked a real and substantial relation to the preservation of street surfaces, albeit petitioners introduced unrebutted expert testimony that the method of traction employed by petitioners' vehicles "caused no more street damage than a conventional car or truck."

Petitioners raised in the trial court by proper motion and supportive unrebutted expert testimony that the traction equipment possessed by a historic licensed U.S. Army tank and a historic licensed U.S. Army half-track, equipped, respectively, with rubber padded tracks and rubber front tire and rear rubber padded tracks, in each instance the rubber padding exceeding two inches in thickness, raising in the subject motions that § 503-31, Cincinnati Municipal Code, as drawn and applied, was repugnant to the Due Process and Equal Protection Clauses of the 14th Amendment of the Constitution of the United States, and was repugnant to Section 2, Article I, of the Constitution of the State of Ohio, and was further repugnant to Section 3, Article XVIII, of the Constitution of the State of Ohio. The trial court in the proceeding against petitioners Coyne and Welty for violation of the subject ordinance was dismissed and petitioners discharged; and the trial court in the proceeding against petitioner Coyne denied his motion, the cause proceeded to a bench trial, the motion challenging the constitutionality of the subject ordinance was renewed and preserved, and the trial court found petitioner Coyne guilty of violating the instant ordinance.

From the conviction petitioner Coyne lodged his appeal in the Court of Appeals. The Court of Appeals, while noting petitioner Coyne's challenge that the instant ordinance violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution of the United States, reversed the conviction on the basis that the subject ordinance was constitutionally infirm under Section 3, Article XVIII, of the Constitution of the State of Ohio. Based upon the same reasoning, the Court of Appeals affirmed the dismissal of the charges brought by the City of Cincinnati against petitioners Coyne and Welty.

The application of § 503-31, Cincinnati Municipal Code,

to this case as decided below, bearing upon the claims that petitioners have been denied equal protection and due process of law, is in conflict with the decisions of this Court bearing upon petitioners' entitlement to equal protection and due process of law granted to them by the Fourteenth Amendment of the Constitution of the United States.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) and Part 5 of the Rules of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Fourteenth Amendment of the Constitution of the United States; § 503-31, Cincinnati Municipal Code; Section 2, Article I, of the Constitution of the State of Ohio; Section 3, Article XVIII, of the Constitution of the State of Ohio; and the pertinent provisions of §§ 4501.01, 4513.25, 4513.38, 4519.01, 4519.40, 4519.41, 5589.08 and 5589.081, Revised Code of Ohio, are set forth in Appendix H.

STATEMENT OF THE CASE

Petitioner John E. Coyne, operated a United States Army Sherman Tank, licensed by the State of Ohio as a historic motor vehicle, on the streets of the City of Cincinnati on November 5, 1978. Petitioner was operating the vehicle at that time in a procession of historic military motor vehicles. A Cincinnati police officer stopped petitioner and cited him for violation of § 503-31, Cincinnati Municipal Code, on the basis that the properly licensed motor vehicle was not equipped with tires of rubber, a misdemeanor offense punishable by a fine of $50.00. On

November 10, 1978, petitioner Coyne was operating the Sherman Tank, petitioner James S. Welty, Jr., was operating a historic licensed United States Army half-track on Cincinnati streets en route with another historic military motor vehicle to the downtown area of Cincinnati preparatory to participation in a Veterans Day parade. Petitioners Coyne and Welty were stopped by a Cincinnati police officer and each charged with violation of § 503-31, Cincinnati Municipal Code. The Sherman Tank possessed an endless band, track, of metal equipped with rubber pads exceeding two inches in thickness, moved by a series of wheels in which the rubber pads came into contract with the roadway surface. The half-track possed rubber tires in its front and the rear traction assembly was comparable to the tank's traction equipment, again equipped with rubber pads in excess of two inches in thickness.

Petitioner Coyne as to the November 5th offense and petitioners Coyne and Welty as to the November 10th offense filed identical motions to dismiss the charge on the basis of the constitutional repugnancy of § 503-31, Cincinnati Municipal Code. Each motion raised the claim that the ordinance infringed upon petitioners' federally insured rights of equal protection and due process of law, that the ordinance was in conflict with the Constitution of the State of Ohio, and that the operation of both vehicles and their respective traction equipment was in accord with the statutory provisions of the State of Ohio regulating the licensing and operation of motor vehicles in that state.

Each motion seeking dismissal on the basis of constitutional repugancy was heard by a judge of the Hamilton County Municipal Court to which each case was assigned. An expert witness was presented from whom evidence was produced that the Sherman Tank fully equipped and armed weighed 33-ton and that the subject tank, unarmed

are not fully equipped, weighed 31-ton. The witness using the greater weight of 33-ton stated that the ground pressure produced by the tank on the roadway surface was 12.55 pounds per square inch. This witness further stated that the tank's weight was distributed over 5,544 square inches, a fractional one-sixth of the ground pressure exerted by a laden cement truck and less than the ground pressure produced by a semi-trailer truck or automobile equipped with conventional rubber tires. The half-track fully armed and equipped would possess a weight of 14,800 pounds, a weight greater than the subject half-track, and in utilizing the greater weight factor that the front tires of that vehicle produced 55 pounds per square inch of ground pressure while the tracking equipment produced 11 pounds per square inch. The expert witness opined that if each vehicle was equipped with conventional rubber tires that the increased ground pressure would be "tremendously increased," and that both vehicles were incapable of producing roadway damage as a matter of physics principle as well as his observations of the operation of both vehicles on a surfaced roadway.

The trial judge hearing the motion pertaining to the November 10th offense, reviewing the statutes of Ohio, noted that runners, skis, pneumatic tires, solid rubber tires, and caterpiller treads were all permitted as traction equipment for motor vehicles operated on Ohio's public roadways, provided that such equipment did not possess spikes, studs, metal projections, or similar equipment which would produce damage to the roadway surface. The trial court found from the evidence presented that a minimum of two inches of solid rubber come into contact with the roadway surface during operation of the subject vehicles, and that the weight per square inch of ground pressure on the roadway surface was considerably less than the weight per

square inch of a tired-vehicle. The trial judge held that § 503-31, Cincinnati Municipal Code, was an arbitrary, discriminatory and unreasonable legislative enactment bearing no real or substantial relation to its avowed purpose of protecting roadway surface, and dismissed the cases pending against petitioners and discharged them from further prosecution.

The trial court hearing the offense of November 4th denied the motion without reason given and the matter proceeded to a bench trial. During the course of trial the arresting officer stated that he observed no roadway damage resulting from the operation of the traction equipment of the tank, the motion for dismissal was renewed and denied and petitioner Coyne was convicted of the offense and sentenced to pay a fine of $50.00 and the costs of the proceedings.

The city appealed the dismissal of the November 10th case and petitioner Coyne appealed his conviction of the November 5th case to the Court of Appeals for the First Appellate District, Hamilton County, Ohio. The cases were consolidated for oral argument and thereafter the Court of Appeals rendered its opinions affirming the dismissal of the November 10th offenses charged against petitioners Coyne and Wilty and reversing the conviction of petitioner Coyne for the November 5th offense, on the basis that § 503-31, Cincinnati Municipal Code, was constitutionally infirm in its prohibition of the use of safe modes of non-tire vehicular traction equipment possessing no potential for roadway damage.

The city timely appealed the matter to the Supreme Court of Ohio. That court in reversing the decisions of the Court of Appeals ruled that while the purpose of the subject ordinance was the preservation of street surfaces,

and acknowledging that petitioners' tracking equipment caused no more damage to the roadway surface than a conventional automobile or truck, and further acknowledging that the instant ordinance has or could possibly have *an unfortunate application,* nonetheless held that petitioners failed to establish by clear and convincing evidence that the ordinance lacked a real and substantial relation to the preservation of street surfaces. Following receipt of the decision, petitioners timely moved the Ohio Supreme Court for a rehearing of the matter seeking to have that court consider petitioners' claim of the ordinance's repugnancy to petitioners' rights vested to them by the Fourteenth Amendment of the Constitution of the United States, an issue not squarely addressed by that court. The Ohio Supreme Court denied petitioners' application for rehearing.

REASONS FOR GRANTING WRIT

Petitioners seek a review by this Court of the grossly discriminatory effect of the operation of an ordinance of a political subdivision of the State of Ohio. Here there is absolutely no evidence whatsoever of the potential for roadway damage through the operation of the two rubber-padded track vehicles, and to the contrary, both the unrebutted evidence presented on the issue and the laws of physics support the proposition, without reserve, that the potentional for surface damage is diminished rather than increased through a weight-distributed rubber-padded track system.

Petitioners are within the class of vehicle operators licensed by the State of Ohio to operate their vehicles on public roadways of that state. The ordinance's limitation of rubber tires is an arbitrary and unreasonable limitation which bears no real or substantial relation to its avowed purpose of street protection, and through the ordinance's operation and effect it subjects persons similarly circumstanced to different treatment.

This ordinance fails in its operation and effect to afford to these petitioners due process of law and equal protection of law to which they are entitled by the provisions of the Fourteenth Amendment of the Constitution of the United States.

SECTION 503-31 OF THE CITY OF CINCINNATI MUNICIPAL CODE, AN ENACTMENT FOR THE PRESERVATION OF THE INTEGRITY OF MUNICIPAL STREETS, ON ITS FACE, AS APPLIED AND AS JUDICIALLLY CONSTRUED, IMPOSES UPON THE CLASS OF MOTOR VEHICLE OPERATORS AN UNREASONABLE AND ARBITRARY PROHIBITION OF ALL MODES

OF VEHICULAR TRACTION OTHER THAN VEHICLES EQUIPPED WITH WHEELS AND RUBBER TIRES, IN THE FACE OF THE TOTAL DEMONSTRATION BY PETITIONERS THAT THE MOTOR VEHICLES HERE INVOLVED, POSSESSING RUBBER TRACKING TRACTION EQUIPMENT, WERE LICENSED MOTOR VEHICLES BY THE STATE OF OHIO FOR OPERATION ON THE PUBLIC ROADWAYS OF THE STATE OF OHIO, WERE AUTHORIZED FOR VEHICULAR TRAVEL THROUGHOUT THE STATE OF OHIO, EXCEPT THE CITY OF CINCINNATI BY VIRTUE OF THE SUBJECT ORDINANCE, AND POSSESSED LESS POTENTIAL FOR ROADWAY SURFACE DAMAGE THAN CONVENTIONAL MOTOR VEHICLES EQUIPPED WITH WHEELS AND RUBBER TIRES, RESULTING IN DISSIMILAR TREATMENT OF MOTOR VEHICLE OPERATORS SIMILARLY CIRCUMSTANCED AND DENYING TO THESE PETITIONER-OPERATORS OF LICENSED TRACKED MOTOR VEHICLES THE EQUAL PROTECTION AND DUE PROCESS OF LAW TO WHICH THEY ARE ENTITLED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

Before the instant proceedings in the state courts of Ohio, the Court of Appeals construed § 503-31, Cincinnati Municipal Code, to prohibit the operation of any vehicle unless it moves on tires, in which that court held that the plain, unambiguous and inescapable meaning of the instant ordinance is that tracked vehicles are not allowed on Cincinnati streets, only vehicles with wheels. (See the unreported opinion set forth herein at Appendix G).

From that backdrop the case came on for determination in the state court system in which the court of last resort had consistently held that an ordinance enacted by a municipality must bear a real and substantial relation to the public health, safety and welfare and can not be arbitrary, discriminatory, capricious or unreasonable. *City of Cleveland* v. *Raffa,* 13 Ohio St. 2d 112, 235 N.E.2d 138 (1968); *City of Cincinnati* v. *Correll,* 141 Ohio St. 535, 49 N.E.2d 412 (1943). Not only did the state court of appeals hold that the instant ordinance was enacted solely as a device for the preservation of the physical integrity of public streets, but the city candidly admitted that this was the only aim of the ordinance. (See Appendix C). Further, the state courts have imposed the burden of proof on the party challenging the constitutionality of a subject ordinance by clear and convincing evidence to establish that the requisite rational nexus between the "means" of the statute do not justify its "end" application. *State* v. *Renalist, Inc.,* 56 OhioSt.2d 276, 383 N.E.2d 892 (1978).

To the limited degree that § 503-31 provides rubber tires as the roadway surface safety factor, the ordinance squares to that degree with its avowed purposes; the constitutional infringement arises from the discriminatory application of that ordinance being limited to only rubber tires to the exclusion of, and without regard for, other equally, and perhaps, superior modes of vehicular traction which contain no potential for street damage.

The Ohio Supreme Court in its consideration of the issue raised imposed an insurmountable burden upon petitioners to establish that the ordinance was wholly and totally unrelated to the preservation of street surfaces. That court, acknowledging that petitioners had demonstrated that the subject enactment had an *unfortunate application,* it failed to perceive its limiting factor of recognizing rubber

tires only and with total disregard to its obvious discrimination to others within the same classification whose vehicles possessed no potential for damage to the street surfacts but who could be convicted for an offense under this ordinance simply because the vehicle did not possess tires.

In reviewing the statutes of Ohio, no comparable prohibition to that addressed by the instant ordinance is discovered. As is observed from a reading of § 4513.25, Revised Code, the subject vehicles exceed the traction surface requirements for a solid tire. Section 4513.38, Revised Code, sets forth the state provisions applicable to a historic motor vehicle and is applicable to both of the subject historic military vehicles. Further, § 4519.01, Revised Code, provides that snowmobiles and all-purpose vehicles are permitted operation on the roadways of Ohio where such vehicles possess skis, runners or caterpillar treads. Sections 4519.40 and 4519.41, Revised Code, set forth the limited prohibitions in the operation of snowmobiles and all-purpose vhicles, which does not contain a prohibition of use on roadways. Sections 5589.08 and 5589.081, Revised Code, set forth the adequate state prohibitions limiting traction equipment to metal parts capable of damaging roadway surfaces.

The clear and abiding proposition of law set forth by the highest court of the state succinctly states the proposition that while the state and its municipalities may make all reasonable, necessary and appropriate provisions to promote the safety and welfare of the community, that neither the state nor a municipality may enact any legislation which is unreasonable; and that the means adopted by such legislation must be suitable to the end in view, must be impartial in its operation and not unduly oppressive upon individuals; and must further possess a real and substantial relation to its purpose and must not interfere with private

rights beyond the necessities of the situation. *Froelich* v. *City of Cleveland,* 99 OhioSt. 376, 124 N.E. 212 (1919). It is further the law within the State of Ohio that the equal protection clause of the Fourteenth Amendment of the Constitution of the United States clearly prohibits and prevents unreasonable and unjustified classifications and distinctions where such classification becomes the purpose of the legislation and shields one class while unduly burdening another. *Richter Concrete Corp.* v. *City of Reading,* 103 OhioApp. 67, 136 N.E.2d 422, at 425 (1956), affirmed 166 OhioSt. 279, 142 N.E.2d 525 (1957), see 142 N.E.2d at 527-528.

Where the subject ordinance's operation in effect is to employ the presumption that distinguishes and burdens all non-rubber tired vehicles, though clearly as protective to road surfaces in their traction equipment, removes the right to petitioners to receive due process of law and such an ordinace's classification to the class of motor vehicle operation is a denial of equal protection of law, as both of those constitutional safeguards are granted to these petitioners by the Fourteenth Amendment of the Constitution of the United States. Cf. *Stanley* v. *Illinois,* 405 U.S. 645 (1972). The subject ordinance must be viewed with strict scrutiny of the classification which the municipality makes in its determination of safe modes of vehicular traction for the protection of its roadway surface, lest, unwittingly or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guarantee of just and equal laws, and when the ordinance lays an unequal hand on those whose vehicular operation is intrinsically of the same quality in its protective value to roadway surfaces and the ordinance authorizes one and prohibits the other, the ordinance has made a clear discrimination which is forbidden by the Equal Pro-

tection Clause of the Fourteenth Amendment of the Constitution of the United States. *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886); *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942).

In viewing § 503-31 one must look to the prohibition of the benefit withheld by the ordinance's classification; the privilege to operate a tracked vehicle on the streets of the city, which is otherwise authorized for operation on all other public roadways within the state. Here, there is no contest as to the power of the state, and its political subdivision, to treat different classes of persons in different ways. The thrust is that the city does not possess the power constitutionally to legislate different treatment to persons within the same class where the legislative criteria is wholly unrelated to the objective of the statute, thus making this arbitrary classification unreasonable as resting upon a ground which is unfair and bears no substantial relation to the objective of the legislation, whereby all persons similar circumstanced are treated differently. *Royster Guano Co.* v. *Virgina,* 253 U.S. 412, 415 (1920); *Reed* v. *Reed,* 404 U.S. 71, 75-76 (1971).

The issue pursued is distinctly different from that addressed in *Railway Express Agency, Inc.* v. *New York,* 336 U.S. 106 (1949). The instant case involves distinctions not drawn according to race, in which the test applied is a consideration whether there is any rational foundation for the discrimination and, if so, the matter is deferred to the wisdom of the state legislatures. *Loving* v. *Virginia,* 388 U.S. 1, 9 (1967). Here, there is no rational foundation for the discrimination suffered by petitioners and the matter is one properly for the consideration of this Court.

It is, therefore, submitted that the issue raised is one properly to be decided by this Court, requiring the reaffirmance of existing principles.

CONCLUSION

For the reasons set forth, certiorari should be granted.

Respectfully submitted,

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Attorney for Petitioners

APPENDIX A

COPY OF THE OPINION OF THE SUPREME COURT OF OHIO

CITY OF CINCINNATI, APPELLANT, *v.* WELTY, APPELLEE.
CITY OF CINCINNATI, APPELLANT, *v.* COYNE, APPELLEE.
(Two Cases.)

[Cite as Cincinnati v. Welty (1980), 64 Ohio St. 2d 28.]

Municipal corporations—Preservation of street surfaces—Constitutionality of ordinance upheld, when—Burden of proof not met.

(Nos. 80-228, 80-229 and 80-230—
Decided November 26, 1980.)

APPEALS from the Court of Appeals for Hamilton County.

On November 5, 1978, appellee John Coyne was charged with operating a Sherman tank on the streets of appellant city of Cincinnati in violation of Cincinnati Municipal Code Section 503-31 (hereinafter C.M.C. 503-31). On November 10, 1978, appellee Coyne and appellee James Welty were charged respectively with operating a Sherman tank and with operating another military vehicle known as a "half-track" on the streets of Cincinnati in violation of C.M.C. 503-31.

In the trial court, Coyne and Welty requested dismissal of the charges for reason that C.M.C. 503-31 was in violation of both the United States and Ohio Constitutions. With respect to the November 5, 1978, charge (case No.

80-230), the trial judge denied Coyne's motion to dismiss. Subsequent to a bench trial, Coyne was found guilty as charged. With respect to the November 10, 1978, charges (case Nos. 80-228 and 80-229), however, a different trial judge granted Coyne and Welty's motions to dismiss for reason that C.M.C. 503-31 was in violation of Section 3, Article XVIII of the Ohio Constitution. Appeals were taken from these inconsistent dispositions.

The Court of Appeals entered judgments for both Coyne and Welty (reversing in case No. 80-230 and affirming in case Nos. 80-228 and 80-229), determining that C.M.C. 503-31 was in violation of Section 3, Article XVIII of the Ohio Constitution.

The causes are now before this court pursuant to the allowance of motions to certify the record.

Mr. Richard A. Castellini, city solicitor, *Mr. Paul J. Gorman,* city prosecutor, and *Mr. Frank H. Prouty, Jr.,* for appellant.

Mr. Andrew B. Dennison, for appellees.

Per Curiam. C.M.C. 503-31 provides:

"No person shall operate any vehicle unless it has tires of rubber or of some equally resilient material, except in the following cases:

"(a) Vehicles drawn by animal power;

"(b) Road rollers, concrete mixers, platform trucks, traction engines being transported beyond the limits of the city, and other similar devices, which may have smooth metallic tires, without cleats, lugs, spikes, projections or sharp or uneven parts likely to cause damage to the surface of the roadway."

The only issue presented is whether C.M.C. 503-31 bears

a real and substantial relation to a proper subject of municipal police power under Section 3, Article XVIII of the Ohio Constitution.* See *Cleveland* v. *Raffa* (1968), 13 Ohio St. 2d 112, 116; *Cleveland* v. *Correll* (1943), 141 Ohio St. 535, paragraph one of the syllabus. The parties agree that the purpose of C.M.C. 503-31 is to preserve street surfaces, which is a proper subject of municipal power. See, *e.g., Union Sand & Supply Corp.* v. *Fairport* (1961), 172 Ohio St. 387.

Appellees' argument in the courts below and before this court is that C.M.C. 503-31 lacks a real and substantial relation to its avowed purpose because it requires vehicles to be equipped with "tires of rubber or some equally resilient material," and thus outlaws other methods of traction that may not necessarily damage street surfaces. As the party challenging an enactment's constitutionality, appellees must of course overcome a strong presumption of constitutionality, and also show by clear and convincing evidence that C.M.C. 503-31 lacks the requisite nexus to its avowed purpose. *State* v. *Renalist, Inc.* (1978), 56 Ohio St. 2d 276, 278-279, and cases cited therein.

The Court of Appeals ruled that appellees sustained this burden by introducing unrebutted expert testimony that the method of traction employed by appellees' vehicles "caused no more street damage than a conventional car or truck."

We disagree. Appellees' burden was not merely to demonstrate that the enactment had or could possibly have

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* Section 3, Article XVIII of the Ohio Constitution states:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

an unfortunate application; rather, it was to show by clear and convincing evidence that C.M.C. 503-31 lacks a real and substantial relation to the preservation of street surfaces. The record and C.M.C. 503-31 are simply devoid of a basis from which the Court of Appeals could have concluded that appellees made this rather substantial showing. Absent such a showing, we are reticent to substitute our judgment for that of a competent legislative body in connection with a subject obviously within its domain.

The judgments of the Court of Appeals are reversed.

Judgments reversed.

CELEBREZZE, C. J., W. BROWN, SWEENEY, LOCHER, HOLMES and DOWD, JJ., concur.

PAUL W. BROWN, J., dissenting. I would affirm the Court of Appeals for the reasons stated in its opinion.

APPENDIX B

COPY OF THE ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,) 1980 TERM
City of Columbus.) To wit: December 30, 1980

CITY OF CINCINNATI,

Appellant,

vs.

JOHN COYNE,

Appellee.

No. 80-229

REHEARING

It is ordered by the court that rehearing in this case is denied.

[CERTIFICATION OMITTED]

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,) 1980 TERM
City of Columbus.) To wit: December 30, 1980

CITY OF CINCINNATI,

Appellant,

vs.

JOHN COYNE,

Appellee.

No. 80-230

REHEARING

It is ordered by the court that rehearing in this case is denied.

[CERTIFICATION OMITTED]

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,) 1980 TERM
City of Columbus.) To wit: December 30, 1980

CITY OF CINCINNATI,

Appellant,

vs.

JAMES WELTY, JR.,

Appellee.

No. 80-228

REHEARING

It is ordered by the court that rehearing in this case is denied.

[CERTIFICATION OMITTED]

APPENDIX C

COPY OF THE OPINION OF THE COURT OF APPEALS

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

No. C-790110

CITY OF CINCINNATI,

Plaintiff-Appellee,

vs.

JOHN COYNE,

Defendant-Appellant.

DECISION
(Filed December 19, 1979)

Messrs. Thomas A. Luebbers, Paul J. Gorman and Frank H. Prouty, Jr., Room 200-A, Alms and Doepke Building, 222 E. Central Parkway, Cincinnati, Ohio 45202, for Plaintiff-Appellee,

Messrs. Brown, Dennison & Klayman, Andrew B. Dennison of counsel, 5th level, Barrister House, 216 E. 9th Street, Cincinnati, Ohio 45202, for Defendant-Appellant.

PER CURIAM.

This cause came on to be heard upon the appeal, the transcript of the docket, journal entries and original papers from the Hamilton County Municipal Court, the transcript of the proceedings, the assignment of error and the briefs and arguments of counsel.

The defendant-appellant, John Coyne, was cited by a Cincinnati police officer for operating a vehicle without tires made of rubber or some other resilient material in violation of Cincinnati Municipal Code (hereinafter C.M.C.) § 503.31[1] after the officer observed him maneuvering a Sherman tank out of a parking lot and onto a public street in the eastern suburbs of Cincinnati.

Prior to trial, he filed a motion to dismiss the charge pending against him on the ground that the statute which he was accused of violating infringed upon his state and federal constitutional rights. The motion, however, was denied after an evidentiary hearing and oral arguments by both parties. A bench trial then commenced in the Hamilton County Municipal Court following which the judge presiding found the appellant guilty as charged and imposed a fifty dollar fine. From the judgment entered

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[1] C.M.C. § 503.31 reads as follows:

"It shall be unlawful to operate any vehicle unless it has tires of rubber or of some equally resilient material, except in the following cases:

(a) Vehicles drawn by animal power.

(b) Road rollers, concrete mixers, platform trucks, traction engines being transported beyond the limits of the city, and other similar devices, which may have smooth metallic tires, without cleats, lugs, spikes, projections or sharp or uneven parts likely to cause damage to the surface of the roadway."

against the appellant and the sentence imposed thereon this appeal is now taken in which the appellant has raised a singular assignment of error.

In that assignment, the appellant designates as reversible error the failure of the court below to grant his motion to dismiss the charge pending against him prior to trial, and in support of his argument he proposes no less than four separate grounds for invalidating the statute under which he was prosecuted. By the appellant's reasoning, C.M.C. § 503.31 violates (1) the equal protection clause of U.S. Constitution amend. XIV, (2) the due process clause of U.S. Constitution amend. XIV, (3) Ohio Constitution, art. I, § 2, and (4) Ohio Constitution, art. XVIII, § 3.

We concur in the appellant's assertion that his motion to dismiss should have been granted by the court below but our decision to invalidate the statute under which he was prosecuted requires that we address only the issue of its validity under Ohio Constitution, art. XVIII, § 3.

Ohio Constitution, art. XVIII, § 3, extends to municipalities within the state the authority to exercise general police powers for the promotion of the public interest. It provides that,

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

By judicial construction, a further gloss has been placed upon the provision quoted above as a result of which it has been held that any city ordinance enacted under the authority conferred by Ohio Constitution, art. XVIII, § 3, must bear a real and substantial relation to the public health, safety and welfare, and, therefore, must not be

arbitrary, discriminatory, capricious or unreasonable. *City of Cleveland* v. *Raffa* (1968), 13 Ohio St. 2d 112, 235 N.E. 2d 138; *City of Cincinnati* v. *Correll* (1943), 141 Ohio St. 535, 49 N.E.2d 412.

Pursuant to the rule articulated in the decisions cited above we have concluded that C.M.C. § 503.31's regulation of access to city streets, prohibiting as it does the operation of tracked vehicles such as the one driven by the appellant,[2] bears no real and substantial relation to the public health, safety and welfare and, thus, we hold that the ordinance contravenes the provisions of Ohio Constitution, art. XVIII, § 3.

In confronting a challenge to the reasonableness of a municipal ordinance such as C.M.C. § 503.31 under the Ohio constitutional provision for what has popularly been termed "local home rule,"[3] our first task is to identify the particular interest within the scope of those contemplated by the local police power which the ordinance is designed to implement. After a careful reading of C.M.C. § 503.31 we are convinced that it was enacted solely as a device to preserve the physical integrity of public streets within the city. Our finding of a singular legislative purpose is buttressed by the City's own admission at the hearing on the appellant's motion to dismiss that this was, in fact, the only aim of the ordinance. Furthermore, we find that such a concern for highway maintenance is undoubtedly within the purview of the authority conferred upon municipalities

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[2] This Court held in *City of Cincinnati* v. *John Coyne*, No. C-76822 (1st Dist. 1977), that C.M.C. § 503.31 prohibited the operation of a tracked vehicle such as the one driven by the appellant in the instant case on Cincinnati streets.

[3] See M. Seasongood, "Cincinnati and Home Rule," 9 Ohio St. L.J. 98 (1948).

by Ohio Constitution, art. XVIII, § 3. See *e.g., Union Sand and Supply Corp.* v. *Fairport* (1961), 172 Ohio St. 387, 176 N.E.2d 227.

Once the purpose of the ordinance has been identified, we must next determine whether the enactment bears, in effect, a reasonable relationship to its avowed purpose. The burden of proof on this issue of the ordinance's constitutionality, *i.e.,* of establishing the requisite rational nexus between "means" and "end," rests upon the party asserting its unconstitutionality. *State* v. *Renalist, Inc.* (1978), 56 Ohio St. 2d 276, 383 N.E.2d 892; *Perkins* v. *Stockert* (2d Dist. 1975), 45 Ohio App. 2d 211, 343 N.E. 2d 340.[4]

In the case *sub judice,* the appellant as the party challenging C.M.C. § 503.31 endeavored to meet his burden of proof at the pretrial hearing on his motion to dismiss by presenting testimony through one James Welty with respect to the effects of operating a Sherman tank on a public street. The witness' testimony which was received by the court below as that of an expert provided in substance that a tank such as that driven by the appellant which was mounted on long tracks composed of thick rubber pads exerted less pounds per square inch of pressure and, thus, inflicted no more damage on a paved street than a truck or an automobile equipped with conventional rubber tires. He further concluded in response to a hypothetical question propounded to him by the appellant's

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[4] In *Renalist,* the Supreme Court of Ohio characterized the burden of proof in a challenge of an ordinance under Ohio Constitution, art. XVIII, § 3, as a showing of "clear and palpable abuse of [the police] power," while in *Perkins* the Court of Appeals for Montgomery County, Ohio, held that the burden of proof is sutained by a clear showing that the challenged law is invalid.

counsel that a tank such as the appellant's "would cause no damage to Cincinnati streets."

The City, although it conducted a rather vigorous cross-examination of the appellant's expert witness, presented no evidence to rebut his testimony concerning the effect of the appellant's tank on road conditions.

Given the state of the evidence before the lower court, it is our view that it admits of only one conclusion, such conclusion being that C.M.C. § 503.31, enacted solely to preserve the physical condition of city streets, lacked a rational basis by prohibiting, in effect, the operation of a vehicle which caused no more street damage than a conventional car or truck. For this reason, we hold that the appellant sustained his burden of proof on the issue of the ordinance's unconstitutionality and that the lower court therefore erred by refusing to grant the motion to dismiss the charge against him based as it was on an unconstitutional ordinance.[5]

Having concluded that the appellant's singular assignment of error is well taken, we hereby reverse the judgment of the Hamilton County Municipal Court and discharge the appellant.

SHANNON, P. J., PALMER and BLACK, JJ.

PLEASE NOTE:

The Court has placed of record its own entry in this case on the date of the release of this Decision.

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[5] The appellant asserts additionally that C.M.C. § 503.31 contravenes Ohio Constitution, art. XVIII, § 3, because its provisions conflict with state statutes enacted by the Ohio Legislature. Although we do not reach this issue by our decision, we note again that the City of Cincinnati has a legitimate interest in protecting its road surfaces and may thus arguably effectuate such interest by prohibiting the operation of vehicles which under state law may otherwise be operated on state highways.

APPENDIX D

COPY OF THE OPINION OF THE COURT OF APPEALS

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

Nos. C-790039, C-790040

CITY OF CINCINNATI,

Plaintiff-Appellant,

vs.

JOHN COYNE and JAMES WELTY,

Defendants-Appellees.

MEMORANDUM DECISION AND JUDGMENT ENTRY

(Filed December 19, 1979)

Messrs. Thomas A. Luebbers, Paul J. Gorman and Frank H. Prouty, Jr., Room 200-A, Alms and Doepke Building, 222 E. Central Parkway, Cincinnati, Ohio 45202, for Plaintiff-Appellant,

Messrs. Brown, Dennison & Klayman, Andrew B. Dennison

of counsel, 5th level, Barrister House, 216 E. 9th Street, Cincinnati, Ohio 45202, for Defendants-Appellees.

PER CURIAM.

These causes, having been consolidated by Order of this Court for briefing and oral argument and now consolidated for decision, came on to be heard upon the appeals, the transcripts of the dockets, journal entries and original papers from the Hamilton County Municipal Court, the transcripts of the proceedings and the briefs and arguments of counsel.

Now, therefore, the assignment of error having been fully considered is accordingly passed upon in conformity with App. R. 12 (A) as follows:

The defendants-appellees, John Coyne and James Welty, were cited for violating Cincinnati Municipal Code (hereinafter C.M.C.) § 503.31[1] after a Cincinnati police officer observed them operating a Sherman tank and another military vehicle known as a half-track, both of which were privately owned and licensed as historical vehicles by the State of Ohio, on Eastern Avenue in Cincinnati, Ohio.

Before trial commenced, the appellees filed motions to dismiss the charges pending against them which were

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[1] C.M.C. § 503.31 provides that,

> "It shall be unlawful to operate any vehicle unless it has tires of rubber or of some equally resilient material, except in the following cases:
>
> (a) Vehicles drawn by animal power.
>
> (b) Road rollers, concrete mixers, platform trucks, traction engines being transported beyond the limits of the city, and other similar devices, which may have smooth metallic tires, without cleats, lugs, spikes, projections or sharp or uneven parts likely to cause damage to the surface of the roadway."

granted after being entertained by a judge of the Hamilton County Municipal Court on the ground that the ordinance under which they were being prosecuted violated Ohio Const., art. XVIII, § 3. These appeals taken by the City of Cincinnati derive from the judgments of the Hamilton County Municipal Court ordering the appellees' discharge. The appellant has given us a singular assignment of error for review.

In that assignment, the City of Cincinnati asserts that the court below erred by discharging the appellees because the ordinance under which they were charged was a valid exercise of the local police power under state constitutional provisions.

We cannot agree.

In *State* v. *Coyne* [*sic*] No. C-790110 (1st Dist. 1979), a recent appeal involving the same ordinance which is in issue in this appeal, this Court held that C.M.C. § 503.31 violated Ohio Const., art. XVIII, § 3. Our finding of the ordinance's unconstitutionality in that decision, therefore, controls our disposition of the instant cause.

Having found that C.M.C. § 503.31 was enacted in violation of state constitutional provisions, we hold that the lower court did not err by discharging the appellees on the basis of the ordinance's unconstitutionality. We, accordingly, conclude that the appellant's singular assignment of error is without merit.

The assignment of error properly before this Court having been ruled upon as heretofore set forth, it is the Order of this Court that the judgments or final orders herein appealed from be, and the same hereby are, affirmed.

It is further Ordered that a mandate be sent to the Hamilton County Municipal Court for execution upon this judgment.

Costs to be taxed in compliance with Rule 24, Appellate Rules.

And the Court being of the opinion that there were reasonable grounds for these appeals, allows no penalty.

It is further Ordered that a certified copy of this Memorandum Decision and Judgment shall constitute the mandate pursuant to App. R. 27.

To all of which the appellant, by its counsel, excepts.

SHANNON, P. J., PALMER and BLACK, JJ.

APPENDIX E

COPY OF ORAL OPINION DELIVERED BY WILLIAM FELLERHOFF, JUDGE OF THE HAMILTON COUNTY MUNICIPAL COURT, DISMISSING THE OFFENSE AGAINST JOHN E. COYNE AND JAMES S. WELTY, JR.

THE COURT: Well, we have reviewed the memorandums submitted and the testimony taken at the last meeting as far as evidence being presented. A review of the statutes of the State of Ohio which we assume as the general law of the state would indicate that runners and skis and pneumatic tires, solid rubber tires, caterpillar treads are all permitted provided that such equipment does not possess spikes, studs, projections and the like which

would obviously damage the roadway surface. At the prior hearing the testimony would indicate that the tracks, I guess I will use the term tracks so there is no misunderstanding. If I use caterpillar that brings in another connotation. I guess I have to be as specific as I can. I am now referring to the Court of Appeals case where they talk about tracks and tires. The tires are not what we assume it to mean because tires are wheels, but anyway for the sake of this discussion, we'll talk about tracks and tires meaning wheels but the testimony would indicate that the tracks contain some projections or other damaging devices which could harm the roadway surface. I guess the testimony would further indicate that a minimum of two inches of solid rubber was in contact with the roadway. Further testimony would indicate that the weight per square inch on the roadway on a tracked vehicle was considerably less than the weight per square inch on a tired vehicle as it was concentrated on a tire or wheel. Now I guess Mr. Coyne's argument is that the city ordinance is partial to tires and tires alone in its operations and oppressive on anyone utilizing a rubber padded track which as the argument says does less potential damage to the roadway surface than does a rubber tire. I think he says I guess because of this, the ordinance in question has no real and substantial relation to the purpose of protecting the street which is the only purpose as far as police power is concerned in this ordinance. Does the tire protect the street better than the track? Section Three, Article 18 of the Ohio Constitution grants authority to municipalities to adopt and enforce within their limits such local police regulations as are not in conflict with general laws and municipal ordinances passed under such authority to be valid, must not be arbitrary, discriminatory, capricious or unreasonable and must bear a real and substantial relation to the health, safety, moral or general welfare of the public

and in this case it must have a substantial relationship to the purpose of this ordinance which is basically to protect the streets. I think we all realize that the police power is elastic to meet changes in conditions and changing needs but it can not be used to abrogate or limit personal liberty or property rights contrary to constitutional sanctions. Therefore if an ordinance is referrable to police power to be valid, the Court must be able to say that it tends in substantial degree to preserve the health, moral, safety, general welfare of the public. That is to preserve the surface of the roadway by the use of tires or rubber or other resilient material and outlaw the use of the treads with rubber tracks two inches thick but it appears to me that there is no plausible, reasonable and substantial connection between the provisions of the ordinance and the supposed evils to the suppressed. I believe the key is the rubber or other resilient material that I think is the substance of the concern of the police power whether a vehicle is conveyed by the agencies of a tire or wheel or by the agency of a continuous track of material. I think for the reasons expressed, I am going to grant the motion ito dismiss.

APPENDIX F

COPY OF ORAL OPINION DELIVERED BY DONALD SCHOTT, JUDGE OF THE HAMILTON COUNTY MUNICIPAL COURT, DENYING MOTION AND FINDING OF GUILT AND IMPOSITION OF SENTENCE AGAINST PETITIONER JOHN E. COYNE

Opinion as to motion

THE COURT: The motion to dismiss is denied.

* * *

Finding of Guilt and Sentence by Court

THE COURT: There is a finding of guilty on 503.31. There is a find of not guilty on 502.9. Is there anything prior to sentence?

MR. DENNISON: No, your Honor.

THE COURT: It is $50 and costs. Do you want a stay?

MR. DENNISON: Yes, your Honor.

THE COURT: Stay for 30 days for appeal purposes, 2-29-79.

(Thereupon, the proceedings were concluded.)

APPENDIX G

COPY OF THE OPINION OF THE COURT OF APPEALS

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

No. C-76822

CITY OF CINCINNATI,

Plaintiff-Appellee,

vs.

JOHN COYNE,

Defendant-Appellant.

MEMORANDUM DECISION AND JUDGMENT ENTRY

(Filed November 30, 1977)

Messrs. Thomas A. Luebbers, Paul J. Gorman and Frank H. Prouty, Room 108-B, Alms & Doepke Building, 222 E. Central Parkway, Cincinnati, Ohio 45202, for Plaintiff-Appellee,

Mr. Andrew B. Dennison, Barrister House, Fifth Level,

216 East Ninth Street, Cincinnati, Ohio 45202, for Defendant-Appellant.

PER CURIAM.

This cause came on to be heard upon the appeal, the transcript of the docket, journal entries and original papers from the Hamilton County Municipal Court, the transcript of the proceedings, the briefs and the arguments of counsel.

Now, therefore, the assignments of error having been fully considered are accordingly passed upon in conformity with App. R. 12 (A) as follows.

Coyne was fined[1] for violation of Cincinnati Municipal Code 503-31, which states in pertinent part:

> "No person shall operate any vehicle unless it has tires of rubber or of some equally resilient material . . ."[2]

The violation consisted of driving a privately-owned Army half-track on Cincinnati streets. While the front of the vehicle was supported by pneumatic tires, the rear rested on two caterpillar treads (tracks). Each track was

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[1] The record discloses that although the court proposed to remit costs on this charge, Coyne requested a fine be imposed because he wanted to appeal. The court obliged.

[2] CMC 503-31 reads in full as follows:

> No person shall operate any vehicle unless it has tires of rubber or of some equally resilient material, except in the following cases:
>
> (a) Vehicles drawn by animal power;
>
> (b) Road rollers, concrete mixers, platform trucks, traction engines being transported beyond the limits of the city, and other similar devices, which may have smooth metallic tires, without cleats, lugs, spikes, projections or sharp or uneven parts likely to cause damage to the surface of the roadway.

an endless belt which passed between the ground and a set of solid rubber wheels bearing the weight of the vehicle, and which were driven by sprocket wheels situated at a higher level. The portion of the tracks in contact with the road was composed of solid rubber two inches in thickness. The trial court, sitting without a jury, found Coyne guilty.

The assigned errors are that the court should have granted Coyne's motion for acquittal for lack of evidence, and that the judgment was against the weight of the evidence.[3]

The ordinance prohibits the operation of any vehicle unless it moves on tires. Neither the Cincinnati Municipal Code nor the statutes of Ohio define "tires." (R.C. 4501.01 (O) and (P) define pneumatic tires and solid tires but only in terms of how they are composed; the word "tire" is not defined.) Accordingly, we must resort to common usage. R.C. 1.42. Our review of the definition of "tire" in standard dictionaries, including Webster's Third New International Dictionary (1971), reveals that a tire is that outer portion of a wheel that makes contact with the ground. The covering on an endless belt is not a tire. We will not play havoc with plain language. A track is not a tire.

The plain, unambiguous and inescapable meaning of CMC 503-31 is that tracked vehicles are not allowed on Cincinnati streets, only vehicles with wheels.

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[3] Coyne did not raise at trial or on appeal any question as to the constitutionality of this ordinance; that is, whether it violates provisions for equal protection of law, or whether it goes beyond home rule powers. We hold that the constitutional error, if any, is not plain error to be considered by us in this appeal. *State* v. *Craft* (1st Dist. 1977), 52 Ohio App. 2d 1. Therefore, we do not reach any issue of the constitutionality of CMC 503-31.

Both assignments of error are without merit. We affirm.

All assignments of error properly before this Court having been ruled upon as heretofore set forth, it is the Order of this Court that the judgment or final order herein appealed from be, and the same hereby is, affirmed.

It is further Ordered that a mandate be sent to the Hamilton County Municipal Court for execution upon this judgment.

Costs to be taxed in compliance with Rule 24, Appellate Rules.

And the Court being of the opinion that there were reasonable grounds for this appeal, allows no penalty.

It is further Ordered that a certified copy of this Memorandum Decision and Judgment shall constitute the mandate pursuant to App. R. 27.

To all of which the appellant, by his counsel, excepts.

PALMER, P. J., BETTMAN and BLACK, JJ.

APPENDIX H

FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

COPY OF SECTION 503-31, CINCINNATI MUNICIPAL CODE

Section 503-31. **Tires.**

No person shall operate any vehicle unless it has tires of rubber or of some equally resilient material, except in the following cases:

(a) Vehicles drawn by animal power;

(b) Road rollers, concrete mixers, platform trucks, traction engines being transported beyond the limits of the city, and other similar devices, which may have smooth metallic tires, without cleats, lugs, spikes, projections or sharp or uneven parts likely to cause damage to the surface of the roadway.

COPY OF SECTION 2, ARTICLE I OF THE CONSTITUTION OF THE STATE OF OHIO

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§ 2 Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly. (See Const 1802, Art VIII, § 1.)

COPY OF SECTION 3, ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF OHIO

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§ 3 [Powers.]

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. (Adopted September 3, 1912.)

COPY OF SECTION 4501.01, REVISED CODE, IN PERTINENT PART

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§ 4501.01 Definitions.

As used in Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code, and in the penal laws, except as otherwise provided:

(A) "Vehicles" means everything on wheels or runners, including motorized bicycles, but does not mean vehicles operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles belonging to any police department, municipal fire department, or volunteer fire department or used by such department in the discharge of its functions.

(B) "Motor vehicle" means any vehicle, including house trailers and recreational vehicles, propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less, threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products.

* * *

(G) "Historical motor vehicle" means any motor vehicle that is over twenty-five years old, and is owned solely as a collector's item and for participation in club activities, exhibitions, tours, parades, and similar uses, but in no event to be used for general transportation.

* * *

(P) "Pneumatic tires" means tire of rubber and fabric or tires of similar material, inflated with air.

(Q) "Solid tires" means tires of rubber or similar elas-

tic material not dependent upon confined air for support of the load.

(R) "Solid tire vehicle" means any vehicle equipped with two or more solid tires.

* * *

COPY OF SECTION 4513.25, REVISED CODE

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§ 4513.25 Solid tire requirements. (GC § 6307-97)

Every solid tire, as defined in section 4501.01 of the Revised Code, on a vehicle shall have rubber or other resilient material on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

COPY OF SECTION 4513.38, REVISED CODE

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§ 4513.38 Collector's or historical motor vehicle test exemptions.

No person shall be prohibited from owning or operating a licensed collector's vehicle or historical motor vehicle that is equipped with a feature of design, type of material, or article of equipment that was not in violation of any motor vehicle equipment law of this state or of its political subdivisions in effect during the calendar year the vehicle was manufactured, and no licensed collector's vehicle or historical motor vehicle shall be prohibited from displaying or using any such feature of design, type of material, or article of equipment.

No person shall be prohibited from owning or operating a licensed collector's vehicle or historical motor vehicle for failing to comply with an equipment provision contained in Chapter 4513. of the Revised Code or in any state rule that was enacted or adopted in a year subsequent to that in which the vehicle was manufactured, and no licensed collector's vehicle or historical motor vehicle shall be required to comply with an equipment provision enacted into Chapter 4513. of the Revised Code or adopted by state rule subsequent to the calendar year in which it was manufactured. No political subdivision shall require an owner of a licensed collector's vehicle or historical motor vehicle to comply with equipment provisions contained in laws or rules that were enacted or adopted subsequent to the calendar year in which the vehicle was manufactured, and no political subdivision shall prohibit the operation of a licensed collector's vehicle or historical motor vehicle for failure to comply with any such equipment laws or rules.

COPY OF SECTION 4519.01, REVISED CODE, IN PERTINENT PART

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§ 4519.01 Definitions.

As used in Chapter 4519. of the Revised Code:

(A) "Snowmobile" means any self-propelled vehicle designed primarily for use on snow or ice, and steered by skis, runners, or caterpillar treads.

(B) "All purpose vehicle" means any self-propelled vehicle designed primarily for cross-country travel on land and water, or on more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof,

including vehicles that operate on a cushion of air, vehicles commonly known as all terrain vehicles, all season vehicles, mini-bikes, and trail bikes, but excluding any self-propelled vehicle not principally used for purposes of personal transportation, any vehicle principally used in playing golf, any motor vehicle or aircraft required registered under Chapter 4503. or Chapter 4561. of the Revised Code, and any vehicle excepted from definition as a motor vehicle by division (B) of section 4501.01 of the Revised Code.

* * *

COPY OF SECTION 4519.40, REVISED CODE

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§ 4519.40 Prohibitions.

The applicable provisions of Chapters 4511. and 4549. of the Revised Code shall be applied to the operation of snowmobiles and all purpose vehicles, except that no snowmobile or all purpose vehicle shall be operated as follows:

(A) On any limited access highway, freeway, or interstate highway, or the right-of-way thereof, except for emergency travel only during such time and in such manner as the director of highway safety shall designate;

(B) On any private property, or in any nursery or planting area, without the permission of the owner or other person having the right to possession of the property;

(C) On any land or waters controlled by the state, except at those locations where a sign has been posted permitting such operation;

(D) On the tracks or right-of-way of any operating railroad;

(E) While transporting any firearm, bow, or other implement for hunting, that is not unloaded and securely encased;

(F) For the purpose of chasing, pursuing, capturing, or killing any animal or wildfowl;

(G) During the time from one-half hour after sunset to one-half hour before sunrise, unless displaying lighted lights as required by section 4519.20 of the Revised Code.

COPY OF SECTION 4519.41, REVISED CODE

§ 4519.41 [Winter operation.]

Snowmobiles and all purpose vehicles being used for winter travel may be operated as follows:

(A) To make a crossing of a highway, other than a highway as designated in division (A) of section 4519.40 of the Revised Code, whenever the crossing can be made in safety and will not interfere with the movement of vehicular traffic approaching from any direction on the highway, and provided that the operator yields the right-of-way to any approaching traffic that presents an immediate hazard;

(B) On highways in the county or township road systems that are not maintained for vehicular winter travel by snow removal, whenever the local authority having jurisdiction over such highways so permits;

(C) Off and alongside a street or highway for limited distances from the point of unloading from a conveyance to the point at which the snowmobile or all purpose vehicle is intended and authorized to be operated;

(D) On the berm or shoulder of a highway, other than

a highway as designated in division (A) of section 4519.40 of the Revised Code, when the terrain permits such operation to be undertaken safely and without the necessity of entering any traffic lane.

COPY OF SECTION 5589.08, REVISED CODE

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§ 5589.08 Operating traction engines upon improved highways. (GC § 13421-12)

No person shall drive over the improved highways of the state, or any political subdivision thereof, a traction engine or tractor with tires or wheels equipped with ice picks, spuds, spikes, chains, or other projections of any kind extending beyond the cleats, or no person shall tow or in any way pull another vehicle over the improved highways of the state, or any political subdivision thereof, which towed or pulled vehicle has tire or wheels equipped with ice picks, spuds, spikes, chains or other projections of any kind. "Traction engine" or "tractor," as used in this section, applies to all self-propelling engines equipped with metal-tired wheels operated or propelled by any form of engine, motor, or mechanical power.

No municipal corporation, county, or township shall adopt, enforce, or maintain any ordinance, rule, or regulation contrary to or inconsistent with this section, or require of any person any license tax upon or registration fee for any traction engine, tractor, or trailer, or any permit or license to operate. Operators of traction engines or tractors shall have the same rights upon the public streets and highways as the drivers of any other vehicles, unless some other safe and convenient way is provided, and no public road open to traffic shall be closed to traction engines or tractors.

COPY OF SECTION 5589.081, REVISED CODE

[§ 5589.08.1] § 5589.081 [Studded tires; prohibitions.]

(A) For purposes of this section, "studded tire" means any tire designed for use on a vehicle, and equipped with metal studs or studs of wear-resisting material that project beyond the tread of the traction surface of the tire; and "motor vehicle," "street or highway," "public safety vehicle," and "school bus" have the same meaning as given those terms in section 451.01 of the Revised Code.

(B) No person shall operate any motor vehicle, other than a public safety vehicle or school bus, that is equipped with studded tire on any street or highway in this state, except during the period extending from the first day of November of each year through the fifteenth day of April of the succeeding year.

(C) This section does not apply to the use of tire chains when there is snow or ice on the streets or highways where such chains are being used, or the immediate vicinity thereof.